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**TITLE 329 SOLID WASTE MANAGEMENT DIVISION****SECOND NOTICE OF COMMENT PERIOD**

LSA Document #20-23

**DEFINITION OF SOLID WASTE FOR HAZARDOUS WASTE MANAGEMENT****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [329 IAC 3.1-5](#) and [329 IAC 3.1-6](#) concerning updates to the identification of solid waste for the purposes of hazardous waste management and related hazardous waste requirements. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

**HISTORY**

First Notice of Comment Period: February 19, 2020, Indiana Register (DIN: [20200219-IR-329200023FNA](#)).

**CITATIONS AFFECTED:** [329 IAC 3.1-5-4](#); [329 IAC 3.1-5-7](#); [329 IAC 3.1-6-1](#); [329 IAC 3.1-6-2](#); [329 IAC 3.1-6-10](#).

**AUTHORITY:** [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-19-3-1](#); [IC 13-22-2-4](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

IDEM is proposing amendments to [329 IAC 3.1-5](#) and [329 IAC 3.1-6](#) to update the identification of solid waste for the purposes of hazardous waste management to be no less stringent than the analogous federal requirements in 40 CFR 260 and 40 CFR 261. The proposed amendments will address certain provisions of the federal definition of solid waste affected by a vacatur ordered by the U.S. Court of Appeals for the D.C. Circuit on July 7, 2017, and the subsequent United States Environmental Protection Agency (U.S. EPA) final rule published on May 30, 2018 (83 FR 24664). The amendments also include state-specific requirements for the hazardous secondary materials transfer-based exclusion at 40 CFR 261.4(a)(24) that shift the responsibility for reporting compliance information for reclamation or intermediate facilities managing hazardous secondary materials from the generator to the reclamation or intermediate facility. The state-specific requirements will improve the availability of information and reduce the risks from the management of hazardous secondary materials while not requiring a hazardous waste facility permit if the regulated entity meets certain conditions.

Because of recent actions at the federal level and an Indiana statutory provision at [IC 13-14-9-8\(h\)](#), Indiana's current hazardous waste requirements are inconsistent with the federal definition of solid waste for the purposes of hazardous waste management. The federal definition of solid waste underwent a significant update with a 2015 U.S. EPA final rule (80 FR 1693). In 2016, the Indiana Environmental Rules Board adopted a rulemaking that included the incorporation by reference of the 2015 definition of solid waste federal rule. On July 7, 2017, the U.S. Court of Appeals for the D.C. Circuit ordered the vacatur of certain provisions of the 2015 definition of solid waste federal rule. The main requirements affected by the vacatur were the definition of legitimate recycling at 40 CFR 260.43 and the verified recycler exclusion at 40 CFR 261.4(a)(24), which was reverted to the transfer-based exclusion included in the October 30, 2008, definition of solid waste federal rule (73 FR 64667). Similar to most states with hazardous waste program authorization, Indiana did not adopt the 2008 definition of solid waste federal rule because of concerns about risks to human health and the environment from the management of hazardous secondary materials under the transfer-based exclusion.

The IDEM rulemaking that incorporated by reference the 2015 definition of solid waste federal rule was promulgated using the abbreviated rulemaking process authorized under [IC 13-14-9-8](#) because the rulemaking was limited to the incorporation by reference of federal requirements and other technical amendments. However, a statutory provision at [IC 13-14-9-8\(h\)](#) voids a state rule adopted under [IC 13-14-9-8](#) authority if the corresponding incorporated federal rule is subsequently vacated by a judicial action. As a result of the 2017 federal court order that vacated certain provisions of the 2015 definition of solid waste federal rule, the affected portions of the Indiana rules were voided and no longer enforceable. This situation created inconsistencies between the federal provisions for the definition of solid waste and Indiana's analogous hazardous waste requirements.

In response to the 2017 court order, U.S. EPA published a direct final rule on May 30, 2018, for the vacatur of certain provisions of the 2015 definition of solid waste federal rule. The final rule corrected requirements affected by the federal court order and made other conforming changes to the rule language in 40 CFR 260 and 40 CFR 261. As a result, authorized states could incorporate the 2018 federal rule to maintain consistency with the requirements for the federal definition of solid waste.

With this rulemaking, IDEM is proposing to incorporate by reference the federal updates in the 2018 direct final rule to make Indiana's rules consistent with the current analogous federal rules for the definition of solid

waste. Related amendments to incorporate the updated federal requirements are proposed in [329 IAC 3.1-5-4](#), [329 IAC 3.1-5-7](#), and [329 IAC 3.1-6-1](#).

IDEM also is proposing new requirements at [329 IAC 3.1-6-2\(15\)](#) and [329 IAC 3.1-6-10](#) that are based on the current federal requirements at 40 CFR 261.4(a)(24)(v)(B) and a vacated requirement previously located at 40 CFR 260.31(d)(4). These requirements will apply to a reclamation facility or an intermediate facility that receives hazardous secondary materials under the transfer-based exclusion at 40 CFR 261.4(a)(24). The reclamation facility or intermediate facility must demonstrate compliance with the requirements in 40 CFR 261.4(a)(24)(v)(B)(1)-(5) and the emergency preparedness and response requirements under 40 CFR 261, Subpart M, before receipt of the hazardous secondary materials. IDEM will review the submitted information and, if the facility complies with the applicable requirements, approve the facility to receive and manage the hazardous secondary materials. The hazardous secondary materials generator then may use the information about the approved facility to meet the generator's compliance obligations under 40 CFR 261.4(a)(24)(v)(B). A reclamation facility or an intermediate facility that does not meet these state-specific requirements may not receive or manage the hazardous secondary materials.

The purpose of these additional state-specific provisions is to add vital requirements for availability of information that are not included in the current federal transfer-based exclusion at 40 CFR 261.4(a)(24). By improving the availability of information to IDEM, regulated entities, and local communities, affected parties can better evaluate the risks to human health and the environment posed by the hazardous secondary materials. Additionally, IDEM's preference to approve the reclamation or intermediate facility before it receives and manages hazardous secondary materials is consistent with the established standards for regulating solid waste facilities. IDEM typically issues permits or registrations to facilities that manage waste or materials rather than rely upon generators to evaluate the waste management capabilities of those facilities. This regulatory structure was an important aspect of the 2015 definition of solid waste federal rule that contributed to IDEM's and most authorized states' preference to adopt the 2015 rule over the 2008 rule.

This rulemaking primarily will affect persons and entities involved in the management of hazardous secondary materials that pursue the transfer-based exclusion at 40 CFR 261.4(a)(24). Those affected may include hazardous secondary material generators, transporters of the materials, intermediate facilities, reclamation facilities, and communities where the facilities are located.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 329 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

#### **[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law**

The following elements of the draft rule impose either a restriction or a requirement on persons to whom the draft rule applies that is "not imposed under federal law" (NIFL element or elements):

The following information is provided with each NIFL element:

- (1) The environmental circumstance or hazard dictating the imposition of the NIFL element in order to protect human health and the environment in Indiana; and examples in which federal law is inadequate to provide this protection for Indiana.
- (2) The estimated fiscal impact and expected benefits of the NIFL element, based on the extent to which the NIFL element exceeds the requirements of federal law.
- (3) The availability for public inspection of all materials relied on by IDEM in the development of the NIFL element including, if applicable: health criteria, analytical methods, treatment technology, economic impact data, environmental assessment data, analyses of methods to effectively implement the proposed rule, and other background data.

NIFL Element (A): [329 IAC 3.1-6-2\(15\)](#) and [329 IAC 3.1-6-10](#)

- (1) The proposed requirements at [329 IAC 3.1-6-2\(15\)](#) and [329 IAC 3.1-6-10](#) are not imposed under federal law, but instead add state-specific provisions to current federal requirements. The proposed requirements in [329 IAC 3.1-6-10](#) shift the responsibility of compliance reporting for the requirements in 40 CFR 261.4(a)(24)(v)(B)(1)-(5) from the hazardous secondary materials generator to the reclamation facility or intermediate facility that receives the hazardous secondary materials. The reclamation facility or intermediate facility must demonstrate the capability to manage hazardous secondary materials regardless of whether the facility submits the compliance information directly to IDEM or if the hazardous secondary materials generator obtains the information and provides it to IDEM.

This NIFL element improves the availability of information and reduces risks to human health and the environment from the management of hazardous secondary materials under the transfer-based exclusion at 40 CFR 261.4(a)(24). Under the federal requirements, an entity is not required to notify IDEM if the reclamation facility or intermediate facility meets the conditions in 40 CFR 261.4(a)(24)(v)(B)(1)-(5) and IDEM only can obtain this information if IDEM requests it from the hazardous secondary materials generator. Rather than rely upon the generator to acquire, maintain, and provide this information, IDEM would prefer to receive the compliance information directly from the reclamation facility or intermediate facility as part of a submittal and approval process. This NIFL element will improve the availability of information for IDEM,

interested parties, and local communities, and possibly for regulated entities. In addition, the potential risks from the management of the hazardous secondary material at the reclamation facility or intermediate facility can be more readily assessed and evaluated if the information is submitted directly to IDEM and more accessible to affected entities. Lastly, this NIFL element is consistent with how IDEM regulates most solid waste facilities.

(2) The estimated fiscal impact and expected benefits of this NIFL element are discussed in more detail in the Potential Fiscal Impact section of this notice. In summary, IDEM only expects the requirement at [329 IAC 3.1-6-10\(a\)\(2\)\(I\)](#) to have a fiscal impact that ranges from \$1,000 to \$4,000 if the reclamation facility or intermediate facility must demonstrate compliance with the emergency preparedness and response requirements at 40 CFR 261, Subpart M. Otherwise, a facility's compliance costs under 40 CFR 261.4(a)(24)(v)(B) do not change except that they must submit the compliance information directly to IDEM for approval instead of providing the information to a hazardous secondary materials generator. The requirement at [329 IAC 3.1-6-10\(a\)](#) for the reclamation facility or intermediate facility to obtain approval before accepting hazardous secondary materials may cause a temporary delay in beginning operations and generating revenue for the facility, as compared to the federal rules, but this requirement does not create any ongoing compliance costs. A hazardous secondary materials generator may benefit from administrative cost savings if they are able to obtain the information required in 40 CFR 261.4(a)(24)(v)(B) from IDEM rather than request and verify that information from the reclamation facility or intermediate facility.

(3) IDEM relied upon the following information for the development of this NIFL element:

(A) Definition of Solid Waste final rule, published on January 13, 2015, at 80 FR 1694 (EPA Document ID#: EPA-HQ-RCRA-2010-0742-0368).

(B) Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule final rule, published on May 30, 2018, at 83 FR 24664 (EPA Document ID#: EPA-HQ-OLEM-2018-0185-0001).

(C) 40 CFR 260.42 and 40 CFR 261.4, updated as of January 24, 2022.

(D) Regulatory Impact Analysis for EPA's 2014 Revisions to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste, U.S. EPA, November 26, 2014 (EPA Document ID#: EPA-HQ-RCRA-2010-0742-0369).

### Potential Fiscal Impact

By adopting the federal updates to the identification of solid waste for the purposes of hazardous waste management, this proposed rule will offer potential cost savings to regulated entities that meet the exclusion at 40 CFR 261.4(a)(24). Meeting the conditions of the exclusion will allow a regulated entity to manage the materials without applying for a hazardous waste facility permit, which ranges in cost from \$23,800 to \$40,600 for a new permit. Maintaining compliance with the exclusion also avoids the cost of permit renewal, which ranges in cost from \$17,200 to \$34,000. In addition, a regulated entity that meets the exclusion will have lower annual operating fees and compliance costs than a facility with a hazardous waste facility permit. For example, a facility operating under the exclusion will not be subject to the annual permit operation fees, which range from \$1,000 to \$37,500.

Most aspects of the state-specific requirements proposed at [329 IAC 3.1-6-10](#) will not have a fiscal impact on reclamation facilities or intermediate facilities. Under the federal rules, any reclamation facility or intermediate facility must meet the requirements of 40 CFR 261.4(a)(24)(v)(B)(1)-(5) to receive hazardous secondary materials. In accordance with 40 CFR 261.4(a)(24)(v)(B), the hazardous secondary materials generator must "make reasonable efforts to ensure" that the reclamation facility or intermediate facility meets the necessary requirements, which may result in the facility providing the compliance information to the generator. IDEM is proposing that the reclamation facility or intermediate facility directly submit to IDEM for approval the information required in 40 CFR 261.4(a)(24)(v)(B)(1)-(5) rather than rely on the hazardous secondary materials generator to verify and provide that information. While the responsibility of compliance reporting shifts from the hazardous secondary materials generator to the reclamation facility or intermediate facility, the content of the compliance information is equivalent to the current federal rules. IDEM only expects these state-specific amendments at [329 IAC 3.1-6-10](#) to have a fiscal impact on a reclamation facility or an intermediate facility if the facility must meet the emergency preparedness and response requirements at 40 CFR 261, Subpart M, as discussed below.

For a hazardous secondary materials generator, the proposed state-specific requirements may lead to administrative cost savings that derive from the change in responsibility for compliance reporting. Rather than seeking out and verifying the information required in 40 CFR 261.4(a)(24)(v)(B)(1)-(5), a provision at [329 IAC 3.1-6-10\(d\)\(1\)](#) allows the generator to meet compliance requirements by using a reclamation facility or an intermediate facility that IDEM has approved. As a result, a hazardous secondary materials generator may have reduced administrative costs to ensure that the reclamation facility or intermediate facility meets the requirements to accept and manage hazardous secondary materials. The cost savings from this requirement will vary depending upon the situation at each facility and the type of hazardous secondary materials managed at the facility.

The proposed state-specific requirement at [329 IAC 3.1-6-10\(a\)\(2\)\(I\)](#) may have a potential fiscal impact on a reclamation facility or an intermediate facility that must demonstrate compliance with the emergency preparedness and response requirements at 40 CFR 261, Subpart M. This requirement was previously located at

40 CFR 260.31(d)(4) and vacated by the federal court order. IDEM deems the emergency preparedness and response requirements important in order for reclamation and intermediate facilities to properly manage hazardous secondary materials. Based on the regulatory impact analysis conducted for the 2015 definition of solid waste federal rule (EPA Document ID#: EPA-HQ-RCRA-2010-0742-0369), the compliance costs for the emergency preparedness and response requirements range from \$1,000 to \$4,000 per facility, depending upon the amount of hazardous secondary materials managed by the facility. If the facility currently has a RCRA Part B permit or meets interim status standards, the facility will not incur additional costs because the facility already must meet equivalent emergency preparedness and response requirements.

The requirement for a reclamation facility or an intermediate facility to submit for approval the compliance information required in 40 CFR 261.4(a)(24)(v)(B)(1)-(5) may temporarily postpone when the facility can begin accepting hazardous secondary materials. The facility may not be able to generate revenue from managing the materials as it awaits approval from IDEM, but this requirement does not create any ongoing compliance costs. Crucially, meeting the exclusion at 40 CFR 261.4(a)(24) reduces the initial and annual compliance costs for a facility compared to the requirements for a hazardous waste facility permit, as already described in this potential fiscal impact section.

#### **Public Participation and Work Group Information**

IDEM did not receive any comments during the first comment period or contact from interested parties regarding the formation of a work group. Therefore, at this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Dan Watts, Rules Development Branch, Office of Legal Counsel at (317) 234-5345 or (800) 451-6027 (in Indiana).

#### **SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD**

IDEM requested public comment from February 19, 2020, through March 20, 2020, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the First Notice of Comment Period.

#### **REQUEST FOR PUBLIC COMMENTS**

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #20-23 Definition of Solid Waste for Hazardous Waste Management  
Dan Watts  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

- (2) By electronic mail to [dwatts1@idem.in.gov](mailto:dwatts1@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

Contact Karla Kindrick at [kkindric@idem.in.gov](mailto:kkindric@idem.in.gov) or (317) 232-8922 if another method of submitting comments within the comment period is desired. Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

#### **COMMENT PERIOD DEADLINE**

All comments must be postmarked, faxed, or time stamped not later than March 11, 2022. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, (317) 234-5345 or (800) 451-6027 (in Indiana).

#### **DRAFT RULE**

SECTION 1. [329 IAC 3.1-5-4](#) IS AMENDED TO READ AS FOLLOWS:

**[329 IAC 3.1-5-4](#) Exemption from classification as a solid waste or to be classified as a boiler; adoption of federal procedures**



**Authority:** [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-22-2-4](#)

**Affected:** [IC 13-22-2](#)

Sec. 4. Granting exemptions from classification as a solid waste or to be classified as a boiler must be performed in accordance with 40 CFR 260.30 through ~~40 CFR 260.33~~. **40 CFR 260.34\*, as amended by 83 FR 24667\***.

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.

(Solid Waste Management Division; [329 IAC 3.1-5-4](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Nov 26, 2019, 11:36 a.m.: [20191225-IR-329180481FRA](#))

SECTION 2. [329 IAC 3.1-5-7](#) IS AMENDED TO READ AS FOLLOWS:

**[329 IAC 3.1-5-7](#) Notification and legitimate recycling of hazardous secondary materials; adoption of federal procedures**

**Authority:** [IC 13-14-8](#); [IC 13-22-2-4](#)

**Affected:** [IC 4-22-2-21](#); [IC 13-22-2](#)

Sec. 7. (a) The notification and legitimate recycling requirements ~~for hazardous secondary materials contained in 40 CFR 260.42\* and through 40 CFR 260.43\*, are incorporated by reference, as amended by 83 FR 24667 through 83 FR 24668\*~~, **apply to the management of hazardous secondary materials**, with the substitutions noted in subsection (b).

- (b) Delete "EPA Form 8700-12" and insert "forms provided by the commissioner" in:
- (1) 40 CFR 260.42(a);
  - (2) ~~40 CFR 260.42(a)(9)~~; **40 CFR 260.42(a)(10)**; and
  - (3) 40 CFR 260.42(b). and
  - ~~(4) 40 CFR 260.43(a)(4)(iii).~~

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, ~~732 North Capitol Street NW, Washington, D.C. 20401, viewed at~~ [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.

(Solid Waste Management Division; [329 IAC 3.1-5-7](#); filed Oct 6, 2016, 1:20 p.m.: [20161102-IR-329160093FRA](#))

SECTION 3. [329 IAC 3.1-6-1](#) IS AMENDED TO READ AS FOLLOWS:

**[329 IAC 3.1-6-1](#) Adoption of federal identification and listing of hazardous waste**

**Authority:** [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-22-2-4](#)

**Affected:** [IC 13-22-2-3](#)

Sec. 1. (a) This rule identifies solid wastes that are subject to:

- (1) regulation as hazardous waste under this article; and
- (2) the notification requirements of [329 IAC 3.1-1](#).

(b) Except as provided in section 2 of this rule, the requirements of 40 CFR 261\*, as amended by:

- (1) 81 FR 85713 through 81 FR 85715\*;
- (2) 81 FR 85806\*;
- (3) 82 FR 60900\*;
- (4) 83 FR 24668 through 83 FR 24671\*;**
- ~~(4) (5) 83 FR 61562 through 83 FR 61563\*;~~

~~(5)~~ **(6)** 84 FR 5938 through 84 FR 5939\*; and  
~~(6)~~ **(7)** 84 FR 67217\*;  
apply to the identification and listing of hazardous waste.

(c) For purposes of this article, a reference to any part of 40 CFR 261 means the version referenced in subsection (b).

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.

(Solid Waste Management Division; [329 IAC 3.1-6-1](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR 2062; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Nov 26, 2019, 11:36 a.m.: [20191225-IR-329180481FRA](#); filed Jan 15, 2021, 1:37 p.m.: [20210210-IR-329200204FRA](#))

SECTION 4. [329 IAC 3.1-6-2](#) IS AMENDED TO READ AS FOLLOWS:

**[329 IAC 3.1-6-2](#) Exceptions and additions; identification and listing of hazardous waste**

**Authority:** [IC 13-14-8](#); [IC 13-22-2-4](#)

**Affected:** [IC 13-11-2](#); [IC 13-14-2-2](#); [IC 13-14-10-1](#); [IC 13-22-2-3](#)

Sec. 2. The following are exceptions, additions, and substitutions to the identification and listing of hazardous waste under 40 CFR 261:

- (1) A material that is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of this article if:
  - (A) in the case of [IC 13-14-2-2](#), the commissioner has reason to believe that the material may be a solid waste within the meaning of [IC 13-11-2-205](#)(a) and a hazardous waste within the meaning of [IC 13-11-2-99](#)(a); or
  - (B) an emergency order is issued under [IC 13-14-10-1](#).
- (2) Delete 40 CFR 261.2(f) and substitute with "Respondents in actions to enforce regulations implementing [IC 13](#) who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation to demonstrate that the material is not a waste or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so."
- (3) References to the "administrator" in 40 CFR 261.10 through 40 CFR 261.11\* means the board.
- (4) In addition to the requirements outlined in 40 CFR 261.6(c)(2)\*, owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to 40 CFR 265.10 through 40 CFR 265.77\*.
- (5) In addition to the listing of federal hazardous waste incorporated by reference in section 1 of this rule, the wastes listed in section 3 of this rule are added to the listing.
- (6) In 40 CFR 261.4(e)(3)(iii)\*, delete the words "in the Region where the sample is collected".
- (7) Delete 40 CFR 261.1(c)(9) through 40 CFR 261.1(c)(12).
- (8) Delete 40 CFR 261.4(a)(13) and substitute section 4 of this rule.
- (9) Delete 40 CFR 261.4(a)(14) and substitute section 4 of this rule.
- (10) Delete 40 CFR 261.6(a)(3)(ii) and substitute section 4 of this rule.
- (11) In addition to the requirements at 40 CFR 261.2(e)(1)(i) for the use or reuse of secondary materials to make products, section 5 of this rule also applies.
- (12) In addition to the solid wastes excluded in 40 CFR 261.4(b)\*, electronic waste or e-waste is excluded, which is any of the following or has the following component:
  - (A) A circuit board, including a shredded circuit board.
  - (B) A diode.
  - (C) A cathode ray tube.
  - (D) A computer.
  - (E) An electronic device.

E-waste does not include vehicles, as defined by [IC 13-11-2-245](#), or white goods, as defined by [IC 13-11-2-266](#). Electronic waste is regulated under [329 IAC 16](#) and must comply with all applicable standards and requirements under [329 IAC 16](#).

(13) At 40 CFR 261.4(a)(26)(i)\* and 40 CFR 261.4(b)(18)(i)\*, delete the phrase "Excluded Solvent-Contaminated Wipes" and substitute the phrase "'Excluded Solvent-Contaminated Wipes' or other words indicating the contents of the container".

(14) Delete 40 CFR 261.4(b)(4)(ii).

**(15) The requirements in section 10 of this rule apply to the management of hazardous secondary materials under the exclusion at 40 CFR 261.4(a)(24).**

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, 732 North Capitol Street NW, Washington, D.C. 20401, viewed at [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.

*(Solid Waste Management Division; [329 IAC 3.1-6-2](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3364; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1638; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2662; filed Aug 15, 2007, 10:22 a.m.: [20070912-IR-329050181FRA](#); filed May 29, 2012, 3:20 p.m.: [20120627-IR-329110090FRA](#); filed Jun 3, 2015, 1:21 p.m.: [20150701-IR-329140288FRA](#); filed Oct 6, 2016, 1:20 p.m.: [20161102-IR-329160093FRA](#))*

SECTION 5. [329 IAC 3.1-6-10](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 3.1-6-10](#) Additional requirements for the management of hazardous secondary materials**

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22-2](#)

**Sec. 10. (a) A reclamation facility or an intermediate facility must obtain approval from the commissioner before the facility can accept hazardous secondary materials that are managed under the exclusion at 40 CFR 261.4(a)(24)\*. Before receiving the hazardous secondary materials, a reclamation facility or an intermediate facility shall submit documentation to the department that demonstrates either of the following:**

**(1) The facility currently complies with:**

**(A) the requirements of a RCRA Part B permit issued under [329 IAC 3.1-13](#); or**

**(B) interim status standards established under [329 IAC 3.1-10](#);**

**that address the management of the hazardous secondary materials.**

**(2) The facility meets the requirements of this subdivision, which are based on the standards contained in 40 CFR 261.4(a)(24)(v)(B). The facility shall comply with the following:**

**(A) Properly and legitimately reclaim the hazardous secondary material and not discard the material.**

**(B) Manage the hazardous secondary material in a manner that is protective of human health and the environment.**

**(C) Use a reclamation process that is legitimate pursuant to 40 CFR 260.43\*.**

**(D) Notify the commissioner of hazardous secondary materials reclamation activities pursuant to 40 CFR 260.42\*.**

**(E) Notify the commissioner that the financial assurance condition is satisfied in accordance with 40 CFR 261.4(a)(24)(vi)(F)\*.**

**(F) Meet either of the following conditions:**

**(i) Has not had any formal enforcement actions taken against the facility in the previous three (3) years for violations of the RCRA hazardous waste regulations or [329 IAC 3.1](#) and has not been classified as a significant noncomplier with RCRA Subtitle C.**

**(ii) If a formal enforcement action has been taken against the facility in the previous three (3) years for violations of the RCRA hazardous waste regulations or [329 IAC 3.1](#) and the facility has been classified as a significant noncomplier with RCRA Subtitle C, the facility must provide credible evidence that it will manage the hazardous secondary materials properly.**

**(G) Have the equipment and trained personnel to safely recycle the hazardous secondary material.**

**(H) If residuals are generated from the reclamation of the excluded hazardous secondary materials, the facility must:**

**(i) obtain the required permits to manage the residuals;**

**(ii) have a contract with an appropriately permitted facility to dispose of the residuals; or**

**(iii) present credible evidence that the residuals will be managed in a manner that is protective of**

human health and the environment.

(l) Meet the emergency preparedness and response requirements in 40 CFR 261, Subpart M\*.

(b) The commissioner shall make one (1) of the following determinations based on the documentation submitted in accordance with subsection (a):

- (1) Approve the facility to accept and manage hazardous secondary materials if the facility meets the requirements of subsection (a).
- (2) Request additional information from the facility that demonstrates the capability to properly manage hazardous secondary materials and comply with the requirements in subsection (a).
- (3) Deny the request to accept hazardous secondary materials if the facility does not meet the requirements of subsection (a).

(c) Before March 1 of each even-numbered year, a reclamation facility or an intermediate facility that is approved under this section to manage hazardous secondary materials shall:

- (1) update the documentation that demonstrates compliance with the requirements of subsection (a); and
- (2) include this updated documentation with the biennial notification required in 40 CFR 260.42(a)\*.

(d) The following conditions apply to a hazardous secondary materials generator that manages hazardous secondary materials under the exclusion at 40 CFR 261.4(a)(24)\*:

- (1) The generator is deemed to have affirmatively answered the questions in 40 CFR 261.4(a)(24)(v)(B)(1) through 40 CFR 261.4(a)(24)(v)(B)(5) if the generator arranges transport of hazardous secondary materials to a reclamation facility or intermediate facility that the commissioner has approved under this section.
- (2) The generator may not arrange transport of hazardous secondary materials to a reclamation facility or an intermediate facility that the commissioner has not approved to accept hazardous secondary materials.

(e) A facility or generator is no longer subject to the requirements of this section when the facility or generator has:

- (1) stopped managing hazardous secondary materials under the exclusion at 40 CFR 261.4(a)(24)\*; and
- (2) submitted a notification to the commissioner on forms provided by the department as required in 40 CFR 260.42(b)\*.

(f) For purposes of subsection (e), a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages, or reclaims hazardous secondary materials under this rule, and does not expect to manage any amount of hazardous secondary materials for at least one (1) year.

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.

(Solid Waste Management Division; [329 IAC 3.1-6-10](#))

#### [Notice of Public Hearing](#)

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